

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

SECURITIES AND EXCHANGE	§	
COMMISSION,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 3:08-CV-2050-D
VS.	§	
	§	
MARK CUBAN,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION  
AND ORDER

In a memorandum opinion and order filed July 17, 2009, the court granted defendant Mark Cuban's ("Cuban's") motion to dismiss under Fed. R. Civ. P. 12(b)(6), but it also gave plaintiff Securities and Exchange Commission ("SEC") 30 days to file an amended complaint. *SEC v. Cuban*, \_\_\_ F.Supp.2d \_\_\_, 2009 WL 2096166, at \*13 (N.D. Tex. July 17, 2009) (Fitzwater, C.J.). The court concluded that "Cuban cannot be held liable under the misappropriation theory of insider trading liability, even accepting all well-pleaded facts as true and viewing them in the light most favorable to the SEC." *Id.* "The court [allowed] the SEC 30 days from the date of th[e] memorandum opinion and order to file an amended complaint, if the SEC can allege that Cuban undertook a duty, expressly or implicitly, not to trade on or otherwise use material, nonpublic information about the PIPE offering." *Id.* It stated that "[i]f the SEC cannot replead as required by today's decision, it may so inform the court, and this

case will be dismissed with prejudice." *Id.*

On August 12, 2009 the SEC timely filed a "Notice and Request Pursuant to the Court's July 17, 2009 Memorandum Opinion and Order." In its notice and request, the SEC "states that it does not intend to file an amended complaint and respectfully requests that the Court enter the final judgment against it to initiate the time for consideration of an appeal." Notice and Request 1.

Accordingly, for the reasons stated in the court's memorandum opinion and order filed July 17, 2009, and in the absence of an amended complaint, the court grants Cuban's January 14, 2009 motion to dismiss and dismisses this action with prejudice by judgment filed today.

**SO ORDERED.**

August 13, 2009.

  
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SIDNEY A. FITZWATER  
CHIEF JUDGE